

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0015**

**Adjusted Gross Income Tax**

**For Fiscal Years Ended 06-30-94, 06-30-95, 06-30-96, 06-30-97, and 06-30-98**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer and its subsidiaries are a worldwide company focused on communications, semi-conductors, office systems, and advanced electronic systems. The taxpayer was audited by the Internal Revenue Service for FYE 6/30/94, 06/30/95, and 06/30/96. In October 1999, the taxpayer reported in a letter to the department the changes but failed to file amended returns and pay the tax due.

Taxpayer filed a protest dated October 17, 2001.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that the 1994 year relates solely to federal audit changes. Taxpayer states that it reported the changes to the Indiana Department of Revenue timely. Taxpayer further requests abatement for FY 1997 because the amount was small. No protest regarding the penalty was addressed for FY 1996.

Although the taxpayer reported its federal RAR adjustments to the department on October 13,

1999, taxpayer also stated that the tax due was zero. Upon audit, it was determined that the taxpayer did in fact have a Indiana tax liability as a result of the IRS adjustments. For 1997, the taxpayer states the assessment is small and no penalty should apply. However, gross income was understated by \$8,891 in tax for that year and adjusted gross income increased from \$117,761 to \$218,965 after reducing the apportionment percentage. The primary reason the assessment was less than \$4,000 was the fact that the taxpayer reported \$81,601 in credits instead of the correct \$90,716. In addition, taxpayer had other errors.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

### **FINDING**

Taxpayer's protest is denied.